No. 83-162

Office-Supreme Court, U.S.
FILED
SEP 28 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, NEW YORK STATE TAX COMMISSION, RODERICK A. CHU, Commissioner of Taxation and Finance, FRANCIS R. KOENIG, Commissioner of the New York State Tax Commission, and MARK FRIEDLANDER, Commissioner of the New York State Tax Commission,

Petitioners,

—VS.—

AIR TRANSPORT ASSOCIATION OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Andrew C. Hartzell, Jr.
(Counsel of Record)
Philip S. Winterer
Steven Klugman
DEBEVOISE & PLIMPTON
875 Third Avenue
New York, New York 10022
(212) 909-6000

Attorneys for Respondent Air Transport Association of America

September 28, 1983

COUNTERSTATEMENT OF QUESTION PRESENTED

Does Section 1113 of the Federal Aviation Act, 49 U.S.C. § 1513, which prohibits state taxes on gross receipts from air carriage, bar New York's franchise tax on air carriers insofar as it is based on gross receipts from air carriage?*

---

* This petition raises issues related to those in *Aloha Airlines, Inc. v. Director of Taxation, State of Hawaii*, No. 82-585, and *Hawaiian Airlines, Inc. v. Director of Taxation of the State of Hawaii*, No. 82-586, which are scheduled for argument before this Court on October 4, 1983.

TABLE OF CONTENTS

	PAGE
COUNTERSTATEMENT OF QUESTION PRESENTED	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
STATUTES INVOLVED	2
COUNTERSTATEMENT OF THE CASE	2
A. Federal Law	3
B. New York Tax	4
C. Respondent's Claim	4
D. Decisions Below	4
SUMMARY OF ARGUMENT	5
ARGUMENT	5
I. Section 1113 Prohibits New York's Tax on the Gross Receipts from Air Carriage	5
II. The Legislative History Confirms Congress' Intention to Prohibit State Taxes on the Gross Receipts from Air Carriage	7
A. The Legislative History	7
1971	7
1972	7
1973	10

PAGE

B. Congress' Intention 13

III. The New York Tax Is Not Saved by Labeling It a "Franchise Tax" 14

A. The New York Tax Is on Gross Receipts 14

B. The Franchise Tax Label Is Irrelevant under Section 1113 14

C. New York's Reliance on Commerce Clause and Federal Obligations Cases Is Misplaced .. 15

IV. Except for the Hawaii Decision, Other Authorities Support Respondent's Position 18

CONCLUSION 21

TABLE OF AUTHORITIES

Cases PAGE

In re Aloha Airlines, Inc., 65 Haw. 1, 647 P.2d 263 (1982), *prob. juris. noted*, ___ U.S. ___, 103 S.Ct. 721 (Jan. 10, 1983) 18-19

Aloha Airlines, Inc. v. Director of Taxation, State of Hawaii, No. 82-585 18-19

American Bank & Trust Co. v. Dallas County, ___ U.S. ___, 51 U.S.L.W. 5181 (July 5, 1983) 6 n.1, 7, 17 n.17, 18

Arizona Public Service Co. v. Snead, 441 U.S. 141 (1979) 17 n.16

Chase Manhattan Bank v. Finance Administration, 440 U.S. 447 (1979) 14 n.13

Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977) 16 n.15

Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102 (1980) 7

Evansville-Vanderburgh Airport Authority District v. Delta Airlines, Inc., 405 U.S. 707 (1972) 8

Fidelity Federal Savings & Loan Association v. de la Cuesta, 458 U.S. 141 (1982) 17 n.16

Hawaiian Airlines, Inc. v. Director of Taxation of the State of Hawaii, No. 82-586 18-19

Massachusetts v. United States, 435 U.S. 444 (1978) ... 3

State of Arizona v. Cochise Airlines, 128 Ariz. App. 432, 626 P.2d 596 (1980) 19

United Air Lines, Inc., v. Porterfield, 276 N.E.2d 629 (Ohio 1971), *appeal dismissed*, 407 U.S. 917 (1972) .20 n.21

PAGE

Werner Machine Co. v. Director of Division of Taxation, 350 U.S. 492 (1956) 18

Wien Air Alaska, Inc. v. State of Alaska, Department of Revenue, No. 3 AN 81-8582 Civ. (Alaska Super. Ct., 3d Dist. May 3, 1983) 20

Federal Statutes

Airport and Airway Revenue Act of 1970, Pub. L. No. 91-258, 84 Stat. 236 3

Airport Development Acceleration Act, Pub. L. No. 93-44, 87 Stat. 88 3

26 U.S.C. § 4261 3

26 U.S.C. § 4271 3

31 U.S.C. § 742 [superseded] 17-18

49 U.S.C. § 1513 ..... *passim*

State Statutes

Alaska Stat. §§ 43.70.020 *et seq.* [repealed] 20

Ariz. Rev. Stat. § 42-1310 [repealed] 19

N.Y. Tax Law Art. 9-A, §§ 208 *et seq.* 6 n.1

N.Y. Tax Law § 184(1) ..... *passim*

Ohio Rev. Code § 5733.05 .....20 n.21

Ohio Rev. Code § 5733.06 .....20 n.21

Ohio Rev. Code § 5745.02 [repealed] 19-20

Legislative Materials

1971

H.R. 2337, 92d Cong., 1st Sess. (1971) 7

PAGE

1972

Hearings on S.2397, S.3302, S.3611, S.3755 Before the Subcomm. on Aviation of the Senate Committee on Commerce, 92d Cong., 2d Sess. (April 25-June 12, 1972) 9

H.R.14847, 92d Cong., 2d Sess. (1972)..... 8

H.R.14991, 92d Cong., 2d Sess. (1972)..... 8

S.3755, 92d Cong., 2d Sess. (1972) 8

S.Rep. No. 1005, 92d Cong., 2d Sess. (1972)..... 9-10

H.R. Rep. No. 1543, 92d Cong., 2d Sess. (1972) 10 n.7

1973

S.38, 93d Cong., 1st Sess. (1973)..... 10

S. Rep. No. 12, 93d Cong., 1st Sess. 26 (1973), *reprinted in* 1973 U.S. Code Cong. & Adm. News 1455..... 3, 10

119 Cong. Rec. 3348 (1973) 10 n.7

119 Cong. Rec. 3349 (1973) 13

119 Cong. Rec. 3350 (1973).....10-11, 10 n.7

Airport Development Acceleration Act of 1973: Hearings on H.R.4082, H.R.2695, H.R.4213, H.R.4214, H.R.4182, and S.38 Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce, 93d Cong., 1st Sess. (March 14-27, 1973) 11-12

Other

Public Debt Ceiling and Interest Rate Ceiling on Bonds: Hearings on H.R.9035 before the House Committee on Ways and Means, 86th Cong., 1st Sess. (1959) ... 17

Miscellaneous

Ops. Ohio Atty. Gen. No. 73-117 (1973)..... 19-20

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-162

NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, NEW YORK STATE TAX COMMISSION, RODERICK A. CHU, Commissioner of Taxation and Finance, FRANCIS R. KOENIG, Commissioner of the New York State Tax Commission, and MARK FRIEDLANDER, Commissioner of the New York State Tax Commission,

Petitioners,

—VS.—

AIR TRANSPORT ASSOCIATION OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the New York Court of Appeals is reported at 59 N.Y.2d 917, and the opinion of the Appellate Division, Third Department, at 91 A.D.2d 169, 458 N.Y.S.2d 709.

STATUTES INVOLVED

Section 1113 of the Federal Aviation Act, 49 U.S.C. § 1513, provides in pertinent part:

> "(a) No State . . . shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom . . . .
>
> "(b) Nothing in this section shall prohibit a State . . . from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services . . . ."

Section 184(1) of the New York Tax Law provides in pertinent part:

> "Every corporation . . . formed for or principally engaged in the conduct of aviation . . . for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or maintaining an office in this state, shall pay a franchise tax which shall be equal to three-quarters of one per centum upon its gross earnings from all sources within this state . . . ."

COUNTERSTATEMENT OF THE CASE

Respondent Air Transport Association of America is an unincorporated trade and service association of 31 airlines, and petitioners are the principal taxing authorities of New York State. Respondent challenged the constitutionality of the tax imposed by Section 184(1) of the New York Tax Law on its members' gross receipts from air carriage, on the ground that such tax is prohibited by Section 1113 of the Federal Aviation

Act and therefore is unconstitutional under the Supremacy Clause of the United States Constitution. The New York Supreme Court, Albany County, at Special Term initially ruled for petitioners but, on reargument, ruled for respondent. The judgment was unanimously affirmed both by the Appellate Division of New York Supreme Court, Third Department, and by the New York Court of Appeals.

A. Federal Law

In 1970, Congress enacted two statutes as part of "a comprehensive program substantially to expand and improve the national airport and airway system." *Massachusetts v. United States*, 435 U.S. 444, 447 (1978). The Airport and Airway Development Act of 1970, Pub. L. No. 91-258, 84 Stat. 219 ("Development Act"), established the Airport and Airway Trust Fund to dispense Federal funds for airport and airway development. The Airport and Airway Revenue Act of 1970, Pub. L. No. 91-258, 84 Stat. 236 ("Revenue Act"), provided for new and increased federal taxes on air carriage to support the Trust Fund. These taxes were

> "an 8% tax on the price of domestic air passenger tickets, see Revenue Act, § 203, 26 U.S.C. § 4261; a $3 'head tax' on international flights originating in the United States, *ibid.*; and a 5% tax on the cost of transporting property by air, Revenue Act, § 204, 26 U.S.C. § 4271."

Massachusetts v. United States, *supra*, 435 U.S. at 451. The taxes were imposed to implement a "national system" of airport and airway development "funded in large part by uniform Federal taxes." S. Rep. No. 12, 93d Cong., 1st Sess. 26 (1973), *reprinted in* 1973 U.S. Code Cong. Adm. News 1434, 1455.

In 1973, Congress supplemented the 1970 legislation by the Airport Development Acceleration Act, Pub. L. No. 93-44, 87 Stat. 88 ("Acceleration Act"), which increased the federal government's portion of airport funding. As part of the Acceleration Act, Congress added Section 1113 to the Federal

Aviation Act. Section 1113 prohibits state and local taxes on gross receipts from air carriage on top of the uniform federal taxes.

B. New York Tax

Section 184 of the New York Tax Law has long taxed the intrastate gross receipts of transportation companies, including airlines. In 1981, the statute was amended to tax interstate gross receipts as well.

C. Respondent's Claim

Section 1113 prohibits state taxes "directly or indirectly" on the gross receipts from air carriage. Respondent claims that a tax based on such gross receipts cannot escape the prohibition by being labeled a "franchise tax." If that were permitted, Section 1113 would be a nullity and the plain purpose of Congress in enacting it would be thwarted. New York's tax on the gross receipts from air carriage is therefore prohibited.

D. Decisions Below

On respondent's motion for summary judgment, New York Supreme Court at Special Term initially held that the New York tax was permitted by Section 1113 (Appendix to Petition ("A-__") at A-19). On respondent's motion for reargument, the court concluded that its initial decision was in error and that the tax was prohibited (A-16).

In affirming, the Appellate Division stated:

> "In our opinion, the plain terms of section 1113 of the Federal Aviation Act strike directly at the subject tax, and do not allow for a construction which permits a tax either directly or indirectly on gross receipts derived from air transportation."

(A-10).

The Court of Appeals affirmed based on the opinion of the Appellate Division (A-1).

SUMMARY OF ARGUMENT

Section 1113 is clear on its face and should be enforced according to its terms. It prohibits state taxes "directly or indirectly" on gross receipts from air carriage, and it would violate the language of the statute as well as Congress' purpose in enacting it to permit gross receipts taxes simply because they are labeled "franchise taxes" by state legislatures. The decision below was therefore correct and the petition should be denied.

ARGUMENT

I

Section 1113 Prohibits New York's Tax on the Gross Receipts from Air Carriage.

Section 1113 provides in pertinent part:

> "(a) No State . . . shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom . . . ."

This language covers virtually every method by which a state might try to dodge the federal prohibition and add a state tax on the same revenues that are subject to the federal taxes.

First, Section 1113 reaches all forms of state taxation by prohibiting any "tax" (normally a percentage of a certain amount), any "fee" (normally a flat amount per unit of measure), and any "head charge" (a fee per person). It then includes the words "or other charge" to ensure against evasion of the prohibition by the use of some other label.

Second, the statute broadly defines what cannot be taxed: (1) "persons traveling in air commerce," (2) "the carriage of persons traveling in air commerce," (3) the "sale of air transportation," or (4) "the gross receipts derived therefrom."

Congress plainly intended that air travel, and its economic measure, gross receipts, not be taxed by the states because they are already subject to federal taxation.

Third, the statute includes the words "directly or indirectly" to bar taxes, however labeled, which impact on air carriage at the gross receipts level where the federal taxes apply.

To make it clear that the prohibitions of subsection (a) did not apply to taxes other than those impacting at the gross receipts level, Congress added a subsection (b) to Section 1113:

> "(b) Nothing in this section shall prohibit a State . . . from the levy or collection of taxes *other than those enumerated in subsection (a)* of this section, including property taxes, *net* income taxes, franchise taxes and sales or use taxes on the sale of goods or services . . . " (emphasis added).

Thus if a tax is not "enumerated" in subsection (a), it is not prohibited. The states remain free, for example, to impose sales and use taxes so long as they are not based on the sale of air carriage, or to impose franchise taxes so long as they are not based on the gross receipts from air carriage.[1] They are also free to impose *net* income taxes.

New York contends that subsection (a) does not prohibit a tax if the taxing state calls it a "franchise" or "property" tax because these labels bring it within subsection (b). If that were true, subsection (b) would be a roadmap for nullifying subsection (a). The "other than" language in subsection (b) defeats New York's contention. The franchise and property taxes referred to as permissible in subsection (b) are those based on *net* income or surplus or asset values—that is, based on

---

1 Franchise taxes are often based on net worth, net income, or some measure other than gross receipts. *See American Bank & Trust Co. v. Dallas County*, ___ U.S. ___, 51 U.S.L.W. 5181, 5184 (July 5, 1983). In fact, New York's general corporate franchise tax is based on net income and other factors, not on gross receipts. New York Tax Law Art. 9-A, §§ 208 *et seq.*

measures "other than" gross receipts from air carriage. Subsection (b) is explicitly subordinated to subsection (a), not vice-versa.

Nor are the subsections ambiguous, as New York contends. As demonstrated above, they are clear, consistent with one another, and logical as written and in their application.

II

The Legislative History Confirms Congress' Intention to Prohibit State Taxes on the Gross Receipts from Air Carriage.

" 'Absent a clearly expressed legislative intention to the contrary, [the statutory] language must ordinarily be regarded as conclusive.' " *American Bank & Trust Co. v. Dallas County, supra*, 51 U.S.L.W. at 5183, *quoting Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). The legislative history of Section 1113 does not indicate an intention contrary to the statutory terms. Indeed, it further illuminates Congress' intention to prohibit state taxes based on gross receipts from air carriage.

A. The Legislative History

1971. On January 6, 1971, only months after passage of the Development Act and the Revenue Act, the first version of what later became Section 1113 was introduced in the House. It provided in relevant part:

> "No State . . . shall levy or collect a tax, fee, or other charge, directly or indirectly, on the carriage of persons in air transportation . . . ."[2]

No action was taken on the bill in 1971.

1972. In early 1972, Congress began a review of the airport development program. Shortly after the Senate commenced

---

2 H.R.2337, 92d Cong., 1st Sess. (1971).

hearings, this Court in *Evansville-Vanderburgh Airport Authority District v. Delta Airlines, Inc.*, 405 U.S. 707 (April 19, 1972), held that the Development Act did not prevent states from imposing "head taxes" on air passengers or on air carriers. *Evansville* focused attention on the need to prohibit state taxes imposed on top of the 1970 federal taxes.

On May 9 and 16, 1972, two identical bills were introduced in the House. In obvious response to *Evansville*, these added to the 1971 bill the language emphasized below:

> "No State . . . shall levy or collect a tax, fee, or other charge, directly or indirectly, on *persons traveling in air transportation or* the carriage of persons in air transportation . . . ."[3]

On June 27, 1972, a comprehensive bill on airport development funding was introduced in the Senate.[4] This bill included the following expanded language prohibiting state taxes:

> "No State (or political subdivision thereof) shall levy or collect a tax, fee, head charge or other charge, directly or indirectly, on persons traveling in air transportation or the carriage of persons in air transportation, *or on the gross receipts derived therefrom*, provided, however, that nothing herein shall prohibit a State (or any political subdivision thereof) from the levy or collection of taxes *other than those enumerated above*, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services (*other than on the sale of interstate air transportation or any portion thereof*); and further provided, that nothing herein shall prohibit a State (or political subdivision thereof) owning or operating an airport from the levy or collection of reasonable rental charges, landing fees and other service charges for the use of airport facilities (*measured on other than a per-passenger basis*)." (emphasis added)

---

3 H.R.14847 and H.R.14991, 92d Cong., 2d Sess. (1972).

4 S.3755, 92d Cong., 2d Sess. (1972).

The phrase "or on the gross receipts derived therefrom" was added after the Vice Chairman of the Civil Aeronautics Board told the Senate Subcommittee on Aviation about an Ohio tax on "the gross receipts of airline business done in Ohio."[5] Just as it broadened the bill to prohibit head taxes after *Evansville*, Congress broadened the bill to prohibit gross receipts taxes after learning of the Ohio tax.

An explanatory phrase, providing that certain taxes "other than those enumerated above" were permitted, also appeared for the first time and as part of the same paragraph containing the basic prohibition. A common-sense reading of the explanatory phrase compels the conclusion that it was not intended to contradict the prohibitions a few lines earlier in the bill.

The same is true of the additional language that permits "sales or use taxes on the sale of goods or services (other than on the sale of interstate air transportation or any portion thereof) . . . ." The parenthetical phrase shows that the only sales and use taxes permitted were those *other than* on the sale of air transportation.[6] The reference to such permissible taxes was never intended to undermine the broad prohibition on enumerated taxes.

The bill was considered by the Senate Commerce Committee in executive session on June 28, 1972, and was "favorably

---

5 *Hearings on S.2397, S.3302, S.3611, and S.3755 Before the Subcomm. on Aviation of the Senate Committee on Commerce*, 92d Cong., 2d Sess. 136-40 (April 25-June 12, 1972).

6 This was the point on which the trial court erred in its initial ruling (A-19). The court thought that since sales taxes were permitted by subsection (b), and since such taxes were always on gross receipts, then, by parallel reasoning, if franchise taxes were permitted by subsection (b), franchise taxes could also be on gross receipts. After the above language on sales taxes was pointed out to the trial court on respondent's motion for reargument, the court recognized that sales taxes on air carriage were not permitted by subsection (b), and it therefore also recognized that franchise taxes on gross receipts were similarly not permitted by subsection (b) (A-16).

reported with one substantive and numerous technical or drafting amendments." S. Rep. No. 1005, 92d Cong., 2d Sess. 7 (1972). As the report explained, the substantive amendment related to airport development grants, which are not relevant here; the other amendments were of a "technical or drafting nature and do not reflect substantive changes in the bill." *Id.*

The "technical or drafting" changes, insofar as they related to what became Section 1113, included dividing the single paragraph into subsections (a) and (b), and eliminating two of the three "other than" phrases in subsection (b). These phrases were undoubtedly dropped as redundant in view of the initial "other than" phrase which was retained. The retained phrase excludes from permissible taxes under subsection (b) any taxes "enumerated" in subsection (a). The statute as so revised was identical to Section 1113 as enacted a year later, in June 1973.[7]

1973. In 1973, the bill that the Conference Committee had agreed on in 1972 was reintroduced as S.38.[8] Senator Pearson explained the prohibition on state taxes:

> "Finally, Mr. President, the committee bill prohibits State and local *taxation of air fares*. The Congress intended in 1970 to preempt the States and localities from levying such taxes, as *taxation on air fares* is one of the predominant sources of revenue for the trust fund. Recent Supreme Court decisions necessitate the clarification of this congressional policy determination.
>
> "If more than 500 localities—or even a significant proportion of this number—were unilaterally to levy taxes

---

7 On October 5, 1972, a Conference Report stated that the Senate bill was acceptable to the House. H.R. Rep. No. 1543, 92d Cong., 2d Sess. 3 (1972). The Senate and the House both passed the bill, but it was pocket-vetoed by President Nixon on October 27, 1972. The veto was of the entire legislation, for reasons unrelated to the state tax prohibition provisions. *See* 119 Cong. Rec. 3348, 3350 (1973).

8 S.. Rep. No. 12, 93d Cong., 1st Sess. 26 (1973), *reprinted in* 1973 U.S. Code Cong. & Adm. News 1455.

on *airline passenger fares*, there would result an unconscionable and unacceptable burden on interstate commerce."

119 Cong. Rec. 3350 (1973) (emphasis added).

In March 1973, during hearings by the House Subcommittee on Transportation and Aeronautics, Theodore Koetz, Deputy Tax Commissioner of Ohio, sought to exempt from the bill's prohibition the Ohio gross receipts tax on airlines. He proposed that the language emphasized below be added to subsection (b):

> "(b) Nothing herein shall prohibit a State . . . from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, sales or use taxes on the sale of goods or services, *privilege or excise taxes, and gross receipts taxes fairly apportioned to a State* . . . ."[9]

Congress rejected this proposal, further indicating its intention to bar any tax on gross receipts from air carriage.

The subcommittee's discussion with Commissioner Koetz shows clearly its awareness of the issue:

> "MR. SHOUP. One final question, Mr. Chairman.
>
> "I was interested in your answer to Mr. Dingell's question, whether this was a gross receipts tax. I fail to understand why this is not a gross receipts tax.
>
> "MR. KOETZ. Well, we start off with the total gross receipts of the airline and then break them down only to the in and out of Ohio's portion.

---

9 *Airport Development Acceleration Act of 1973: Hearings on H.R.4082, H.R.2695, H.R.4213, H.R.4214, H.R.4182, and S.38 Before the Subcomm. on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce*, 93d Cong., 1st Sess. 248-49 (March 14-27, 1973).

"MR. SHOUP. But it is based on the gross receipts?

"MR. KOETZ. It is based on the gross receipts attributable to Ohio, origination-destination.

"MR. DINGELL. If the gentleman will yield: then it is a gross receipts tax. It either is an excise tax or it is a gross receipts tax. And I do not think calling it an excise tax is going to make it; so, to be perfectly frank with you. This is either an excise tax or a gross receipts tax.

"So really, you have a gross receipts tax, and the only difference between this and a regular gross receipts tax, for example, on an airline doing business, would be that you would simply say: 'OK fellows, we are only going to charge you on that portion of the business which is done inside the State of Ohio.'

"But the Federal Constitution would prohibit you from levying a tax on business that is done outside the State of Ohio anyway."[10]

In commenting on the Ohio tax, Congressman Shoup stated:

"I think the problem we have here on the committee on the head tax is not the fact that revenues being raised for a very needed use, but the fact that we made these decisions some years ago that we would take a national view of it, not individual.

"And it would seem to me that this type of tax [the Ohio tax] does not differ from a head tax; that each State and each community, if we can justify Ohio's, would be able to add their own excise tax, which I can't see differs from a head tax."[11]

After these hearings, the bill with the state tax prohibition was passed by Congress and signed by the President on June 18, 1973.

---

10 *Id.* at 251-52.

11 *Id.* at 250.

B. Congress' Intention

This legislative history demonstrates Congress' intention to prohibit state taxes on top of the federal taxes on air carriage. Senator Cannon stated that such taxes would be a "form of double taxation which we did not intend when, in 1970, we enacted a national system of aviation user taxation." 119 Cong. Rec. 3349 (1973). It is important to note that the federal taxes collected under the 1970 legislation are not lost to the states; instead, they are deposited in the Trust Fund, from which they are distributed to the states for use in the development and improvement of airports and airways. In requiring air carriage to bear the burden of these federal taxes, it was fair and logical for Congress to prohibit states and localities from imposing additional taxes on the same gross receipts subject to federal tax.

The franchise, property and other taxes referred to in subsection (b), therefore, are valid only if based on a measure "other than" air carrier gross receipts. This is the only sensible and logical reading of the statutory language and of the legislative history.

New York contends that Congress' purpose was a narrow prohibition of state head taxes in response to *Evansville*. That view is contradicted by the statutory language, which Congress could easily have limited to head taxes if that were all it intended to prohibit, and by the legislative history. Furthermore, the contention ignores the fact that this legislation was first introduced more than a year *before Evansville*. Although the enactment later of an expanded version of Section 1113 was partly motivated by that decision, the legislative history shows that Congress intended, before *Evansville* and after, to bar all state taxes imposed on top of the federal taxes.

III

The New York Tax Is Not Saved by Labeling It a "Franchise Tax."

New York's principal argument is that Section 1113 prohibits only taxes "on" gross receipts and not franchise taxes "measured by" gross receipts. The courts below correctly found this distinction irrelevant to the application of Section 1113.

A. The New York Tax Is on Gross Receipts.

There can be no dispute that the New York tax is based on gross receipts from air carriage. Although Section 184(1) uses the words "gross earnings" instead of gross receipts, virtually the entire tax is based on gross receipts from air carriage.[12]

B. The Franchise Tax Label Is Irrelevant under Section 1113.

Subsection (a) prohibits taxes "directly or indirectly" on the gross receipts from air carriage. The Section 184(1) tax may be a franchise tax. However, it is also, for purposes of Section 1113, a tax on gross receipts.[13] It is based on gross receipts,

---

12 The State's tax form, a copy of which is in Respondent's Appendix at RA-1, demonstrates the operation of the tax. Line 91 on page 4 lists "Aviation" followed by a column for "Gross Receipts," part to be allocated to New York (RA-4). Page 3 of the Instruction Sheet, referring to line 91 of the "Gross Receipts" column, states: "*Enter total gross receipts earned from aviation services* everywhere and multiply by the allocation percentage for aviation corporations . . ." (emphasis added) (RA-7).

The tax is also imposed on other categories of airline income, such as interest on bank accounts and rental income. Respondent does not challenge the tax on these other categories, but New York cannot save a prohibited tax by adding to it other—and here minor—permissible taxes.

13 The characterization of the tax under Section 1113 is a question of federal, not state, law. *Chase Manhattan Bank v. Finance Administration*, 440 U.S. 447, 449 (1979).

rises and falls with gross receipts, and does not exist if there are no gross receipts. A common-sense reading of Section 1113 makes it, for purposes of that statute, a tax on gross receipts. If not a direct tax, it is certainly an indirect tax on gross receipts.

New York asserts that the tax is imposed only "on" the franchise and not "on" gross receipts, and that gross receipts are merely the measure. But Section 1113 prohibits a tax so measured. Subsection (a) refers not only to the persons and activity the states are barred from taxing (*i.e.*, air travellers, air carriage and the sale thereof) but also to the measure the states are barred from using (*i.e.*, a measure based on gross receipts). It unambiguously extends its prohibition to all state taxes that "directly or indirectly" are on gross receipts, without any exception based on labels.[14]

If New York were correct, subsection (a)'s prohibitions could be ignored any time a state labeled its tax a "franchise tax." It could then base the tax on gross receipts from air carriage or even on the number of passengers entering or leaving aircraft. Obviously, Congress did not intend that result.

C. New York's Reliance on Commerce Clause and Federal Obligations Cases Is Misplaced.

New York relies on the distinction drawn in older Commerce Clause cases between taxes "on" the corporate franchise, which were permitted although measured by the volume of interstate business, and taxes "on" interstate business, which were prohibited as burdening interstate commerce.

---

14 The prohibition is further illustrated by the provision in subsection (b) that "*net* income taxes" are permissible. There would have been no reason to include in subsection (b) any description of taxes by measure—*i.e.*, net income taxes—if subsection (a) had not prohibited taxes by measure—*i.e.*, gross receipts taxes. The provision that *net* income taxes are permissible merely emphasizes that *gross* receipts taxes are not.

There is not the slightest hint in Section 1113's legislative history that Congress had that distinction in mind when it enacted Section 1113. On the contrary, subsection (a) describes the prohibited taxes in terms of their impact, not their labels, and bars any charge on the business of air carriage or the volume of that business represented by its gross receipts—that is, any charge against the top line, so to speak. That is where the federal taxes apply, and Congress intended to prohibit additional state taxes at that level. It would defeat that purpose if such a tax could be imposed by calling it a franchise tax and adopting the economically meaningless distinction drawn from the older Commerce Clause cases.[15]

Permitting such a tax would render meaningless the reference to "gross receipts" in subsection (a)'s prohibitory language. For it is not plausible to suggest that Congress prohibited gross receipts taxes like the Ohio tax, but intended to permit taxes with precisely the same economic consequences like the New York tax. There is a fundamental difference between a gross receipts tax and the types of taxes permitted by subsection (b). A gross receipts tax because of its top-line impact is a charge on the air carriage business itself. A tax on the owner's net receipts from operations (*i.e.*, net income) or on his surplus, capital or property (*i.e.*, the assets used in the business) is entirely different. Consistent with the congressional purpose, the federal taxes impose a charge on the air carriage business itself, for Congress intended that business to bear a significant part of the expense of airport and airway development. But it also intended to bar similar state charges.

The distinction in the older Commerce Clause cases was an attempt to accommodate state taxes to the general rule that the states could not directly tax interstate commerce. In applying Section 1113, however, the question is not how to accommodate a state tax to the general requirements of the Commerce

---

15 This Court has recognized that the distinction is without practical significance and has no current relevance even in Commerce Clause cases. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

Clause, but how to apply an express act of Congress whose *sole* purpose is to prohibit particular state taxes. Even if it were at one time justifiable in the Commerce Clause context, the distinction relied on by New York cannot logically be applied to nullify the plain command of Section 1113.[16]

New York's reliance on the federal obligation cases is similarly misplaced. For many years prior to 1959, 31 U.S.C. § 742 provided that federal obligations were "exempt from taxation."[17] The State of Idaho imposed a tax "on every individual measured by his net income," including income from federal obligations, and attempted to avoid § 742 by arguing that the tax was "on" the individual rather than "on" his income. Stating that this was "a distinction of words which is without substance,"[18] the Eisenhower Administration in 1959 proposed, and Congress adopted, the following statutory clarification:

> "This exemption extends to every form of taxation that would require that either the obligations or the interest thereon, or both, be considered, directly or indirectly, in the computation of the tax, except non-discriminatory franchise or other nonproperty taxes in lieu thereof imposed on corporations and except estate taxes or inheritance taxes."

---

16 New York mistakenly relies on implicit preemption cases in arguing that no intent to preempt state law should be inferred: Section 1113 explicitly preempts state law, and there is no need to infer an intent to preclude. The only question is whether the federal law applies to the state tax in issue, and in deciding that question the federal law is to be construed in a way that is "faithful not only to [the] statute but also to the expressed intent of Congress in enacting it." *Arizona Public Service Co. v. Snead*, 441 U.S. 141, 150 (1979); *see also Fidelity Federal Savings & Loan Association v. de la Cuesta*, 458 U.S. 141, 152-53 (1982).

17 *See American Bank & Trust Co. v. Dallas County, supra*, 51 U.S.L.W. at 5182 n.1.

18 *Public Debt Ceiling and Interest Rate Ceiling on Bonds: Hearings on H.R. 9035 before the Committee on Ways and Means*, 86th Cong., 1st Sess. 71 (1959).

Prior to this amendment, this Court in *Werner Machine Co. v. Director of Division of Taxation*, 350 U.S. 492 (1956), had permitted a state franchise tax measured by a yardstick which included tax-exempt federal bonds. The Court recognized, however, that the impact of such a tax "may be said to bear *indirectly* upon such income or property" (emphasis added). *Id.* at 494. And, as the Court recently stated in *American Bank & Trust Co. v. Dallas County, supra*, 51 U.S.L.W. at 5184, such a tax "takes into account, at least *indirectly*, the federal obligations that constitute a part of the bank's assets" (emphasis added). Section 1113, by its express terms, prohibits taxes which are "directly or indirectly" on the gross receipts from air carriage. By any reading, the New York tax is such a tax.[19]

IV

Except for the Hawaii Decision, Other Authorities Support Respondent's Position.

New York points out that the decision below conflicts with the Hawaii Supreme Court decision in *Aloha Airlines, Inc. v. Director of Taxation, State of Hawaii*, No. 82-585, and *Hawaiian Airlines, Inc. v. Director of Taxation of the State of Hawaii*, No. 82-586, which this Court has scheduled for argument on October 4, 1983.[20]

We submit that the Hawaii Supreme Court's decision was erroneous. First, the Hawaii Supreme Court wrongly concluded there was an ambiguity between subsections (a) and (b) because, while the former barred taxes "directly or indirectly"

---

19 New York argues that the exception for non-discriminatory franchise taxes in the amendment to § 742 supports its argument that a similar exception was intended by Section 1113(b). This argument ignores the fact that subsection (b) only applies to taxes "other than those enumerated in subsection (a)." No such subordination is found in § 742.

20 *In re Aloha Airlines, Inc.*, 65 Haw. 1, 647 P.2d 263 (1982), *prob. juris. noted*, ___ U.S. ___, 103 S.Ct. 721 (Jan. 10, 1983).

on gross receipts, the latter permitted property taxes which the court stated were "ordinarily derived from the 'gross receipts' of airlines." *In re Aloha Airlines, Inc.*, *supra*, 647 P.2d at 270. The court ignored the "other than those enumerated" language of subsection (b), which eliminates any ambiguity and makes the subsections consistent. Second, the court gave no attention to the legislative history discussed at pp. 7-12, *supra*, which shows the clear and consistent relationship between the two subsections. Finally, the court mistakenly concluded that Section 1113 prohibited only ticket taxes on passengers and shippers, not taxes on airlines. This conclusion is contrary to the language and legislative history of the section. It would render meaningless most of the language of subsection (a), especially the prohibition against taxes on gross receipts, which are necessarily receipts of the carrier.

Other authorities are consistent with the decision of the New York courts. In *State of Arizona v. Cochise Airlines*, 128 Ariz. App. 432, 626 P.2d 596 (1980), an Arizona appellate court held that an Arizona "transaction privilege tax" based on "the gross proceeds of sales or gross income from the business . . . [of air carriage]," Ariz. Rev. Stat. § 42-1310, was invalid under Section 1113. Like New York, Arizona argued that Section 1113 prohibited only "head taxes," but the court reviewed both the statutory language and legislative history and concluded that the scope of the prohibition is much broader. The Arizona tax was functionally indistinguishable from the New York tax. Although not labeled a franchise tax, it was a privilege tax measured by gross receipts. The same meaningless argument could be made that the tax was on the privilege and not on the gross reciepts.

Similarly, the Ohio Attorney General in a 1973 opinion concluded that Ohio's privilege tax based on gross receipts was prohibited by Section 1113. Ops. Ohio Att'y Gen. No. 73-117 (1973). Based primarily on a functional analysis of the impact of the tax, that opinion stated:

> "The language of [Section 1113] is clearly inclusive of the Ohio Airlines Excise Tax [Ohio Rev. Code § 5745.02)

> which by its terms falls within the category of a tax upon the gross receipts derived from the sale of air transportation."[21]

Finally, in *Wien Air Alaska, Inc. v. State of Alaska, Department of Revenue*, No. 3 AN 81-8582 Civ. (Alaska Super. Ct., 3d Dist. May 3, 1983), an Alaska court ruled that Section 1113 barred the application of the Alaska Business License Tax to Wien's carriage of passengers and mail and to its interstate, foreign or overseas carriage of freight. The Alaska tax, Alaska Stat. §§ 43.70.020 *et seq.* (repealed in 1978), was not a franchise tax but a license tax based on gross receipts for the "privilege of engaging in a business in the State . . . ."

As the opinion of the Appellate Division in the present case concluded (A-11):

> "Defendants argue that the New York franchise tax challenged herein is distinguishable from both the Ohio tax and Arizona tax. We, however, are unable to find any meaningful distinction. The language of Section 184 (subd. 1) also refers to 'privilege,' and defendant's argument that the measurement of the challenged tax by gross earnings is distinguishable from a direct tax on gross receipts is without substance."

---

21 New York incorrectly asserts that there is an Ohio franchise tax on airlines that "may include receipts from the sale of air transportation in the calculation of its base." (Petition at 22). The Ohio franchise tax, Ohio Rev. Code §§ 5733.05 and 5733.06, is based on capital surplus and reserves (net worth) or on *net* income. Since the tax is not on gross receipts, it is not invalid under Section 1113. New York's misunderstanding stems from its misreading of *United Air Lines, Inc. v. Porterfield*, 276 N.E.2d 629 (Ohio 1971), *appeal dismissed*, 407 U.S. 917 (1972), which states that, in determining what portion of a corporation's net worth or net income is allocable to Ohio, gross receipts are a component of the denominator of the allocation fraction. But the tax is on *net* worth or *net* income allocated to Ohio, not on *gross* receipts.

CONCLUSION

For the reasons stated, the decision below was correct and the petition for a writ of certiorari should be denied.

Respectfully submitted,

Andrew C. Hartzell, Jr.
(Counsel of Record)
Philip S. Winterer
Steven Klugman
DEBEVOISE & PLIMPTON
875 Third Avenue
New York, New York 10022
(212) 909-6000

Attorneys for Respondent Air Transport Association of America

September 28, 1983

RESPONDENT'S APPENDIX

CT-183/184

Article 9
Sections
183 and 184

STATE OF NEW YORK
FRANCHISE TAX REPORT
on
Capital Stock and Gross Earnings
BY TRANSPORTATION AND TRANSMISSION CORPORATIONS AND ASSOCIATIONS

1982

OFFICIAL USE ONLY

DATE RECEIVED

New York State Tax Department

For the calendar year ended December 31, 1982 or

File with: Processing Unit, P.O. Box 1909, Albany, N.Y. 12201 on or before **March 15, 1983**

EMPLOYER IDENTIFICATION NUMBER | FILE NUMBER

NAME

CHECK IF CHANGED SINCE LAST REPORT OR IF LABEL IS INCORRECT ☐ ADDRESS ☐ EMPLOYER NO.

NUMBER AND STREET

MAKE CORRECTION ON LABEL.

CITY OR TOWN | STATE | ZIP CODE

FOR AUDIT USE ONLY

STATE OR COUNTRY OF INCORPORATION | TELEPHONE | DATE OF INCORPORATION | DATE BEGAN BUSINESS IN NYS

PRINCIPAL BUSINESS ACTIVITY | IS THE CORPORATION ORGANIZED UNDER N.Y.S. TRANSPORTATION CORPORATION LAW? ☐ - YES ☐ - NO | BUSINESS GROUP CODE NUMBER PER FEDERAL RETURN •

IMPORTANT – COMPLETE ALL LINES MARKED • USE ZEROS WHERE THEY APPLY.

REMIT AMOUNT SHOWN AT LINE 17 - MAKE CHECK PAYABLE TO: NEW YORK STATE CORPORATION TAX → $ | REMITTANCE •

SCHEDULE A - TAX COMPUTATION		A SECTION 183	B SECTION 184
1. Tax on allocated issued capital stock from Schedule E, Line 62	1	$	
2. Tax on Dividends from Schedule F, Line 81 or Line 85	2		
3. Minimum Tax	3	75 00	
4. Tax on Gross Earnings from Schedule H, Line 104	4		$ •
5. Tax on Dividends from Schedule I, Line 110	5		•
6. TAX DUE: Column A - Amount from Lines 1, 2 or 3, whichever is largest. Column B - Line 4 or Line 5	6		
7. Less: Additional Mortgage Recording Tax Credit - Attach Form CT-43	7	•	•
8. Total: Subtract Line 7 from Line 6	8	•	•
9. First Installment for calendar year 1983 (Section 184 only) 25% of Line 8, Col. B if tax exceeds $1000	9		•
10. Total - Add Lines 8 and 9	10		
11. Less: Prepayments	11	•	•
12. Total - Subtract Line 11 from Line 10 - Indicate OVERPAYMENTS by ( )	12		
13a. Transfer credit from Column ____ to Column ____	13a	-	• - •
13b. Total - Subtract Line 13a from Line 12	13b	$	$
14. OVERPAYMENT — CREDIT to next year → / REFUND →	14	$ •	$ •
		•	•
15. TOTAL TAXES DUE - Line 12, Col. A plus Col. B, OR Line 13b, Col. A or B	15		•
16a. Interest - Compute on Line 15 minus First Installment, Line 9, Column B	16a		•
b. Additional Charge - Compute on Line 15 minus First Installment, Line 9, Column B	16b		•
17. BALANCE DUE - Add Lines 15, 16a and 16b — PAY →	17		$ •

CERTIFICATION OF AN ELECTED OFFICER OF THE CORPORATION

I hereby certify that this report, including any accompanying rider, is to the best of my knowledge and belief a true, correct and complete report.

Date | Signature of officer | Official title

Date | Signature of individual or name of firm preparing this report | Preparer's address

RA-2

SCHEDULE B – THIS SCHEDULE MAY BE LEFT BLANK IF THE CORPORATION DOES NOT CLAIM ALLOCATION –

PART I - Allocation - General Transportation Corporations - SECTION 183		AVERAGE VALUE FOR THE YEAR (a) New York	(b) Everywhere
18. Bills and accounts receivable	18	$	$
19. Shares of stock of other companies owned (attach list showing corporate name, shares held and actual value)	19		
20. Bonds, loans and other securities, exclusive of obligations of the United States, held, used or employed	20		
21. Leaseholds	21		
22. Real Estate owned	22		
23. All other assets (except cash and investments in U.S. obligations)	23		
24. Total: Add Lines 18 through 23	24	$	$
25. Allocation percentage, Line 24, Column (a) ÷ (b)	25	%	
PART II - Allocation - Aviation Corporations ONLY		(a) New York	(b) Everywhere
26. Revenue aircraft arrivals and departures	26		
27. New York percentage: Column (a) ÷ Column (b)	27	%	
28. Revenue tons handled	28		
29. New York Percentage: Column (a) ÷ Column (b)	29	%	
30. Originating revenue	30	$	$
31. New York percentage: Column (a) ÷ Column (b)	31	%	
32. Total –Add Lines 27, 29 and 31	32	%	
33. Allocation percentage: Line 32, divided by three	33	%	
PART III Allocation for Corporations Operating Vessels in Foreign Commerce - SECTION 183		(a) New York Territorial Waters	(b) Everywhere
34. Aggregate number of working days	34		
35. Allocation percentage: Line 34, Column (a) ÷ Column (b)	35	%	

SCHEDULE C - ASSETS AND LIABILITIES		(a) Beginning of Year	(b) End of Year
36. TOTAL ASSETS	36		
37. Total liabilities	37		
38. Capital stock: (a) Preferred stock	38a		
(b) Common stock	38b		
39. Paid-in or capital surplus	39		
40. Retained earnings (appropriated or unappropriated)	41		
41. Less cost of treasury stock	41		
42. TOTAL LIABILITIES AND CAPITAL	42		

SCHEDULE D - RECONCILIATION OF RETAINED EARNINGS

43. Balance beginning of year	43	
44. Net income - attach Profit and Loss Statement	44	
45. Other additions - explain	45	
46. TOTAL	46	
47. Dividends	47	
48. Other deductions - explain	48	
49. TOTAL dividends and other deductions	49	
50. Balance end of year	50	

51. Did this corporation during the year purchase any of its Capital Stock?

☐ Yes ☐ No

If "Yes", attach rider showing number and kind of shares, consideration received for the issuance of such shares and purchase price of each share.

RA-3

CT-183/184 Page 3

SCHEDULE E - COMPUTATION OF TAX BASED ON THE "NET VALUE" OF ISSUED CAPITAL STOCK

(a) Class of STOCK	(b) Number of Shares at year end	(c) PAR VALUE	(d) Amount paid in on Each Share	(e) Selling Price During Year High	(e) Selling Price During Year Low	(f) Average Selling Price	(g) NET VALUE Col. (b) X Col. (f)
Common		$		$	$	$	$
Preferred		$		$	$	$	$
NO PAR VALUE			$	$	$	$	$
52. Total					TOTAL NET VALUE →		$

53. Number of shares of Issued Stock, Line 52, Column (b) X $5.00	53	$
54. Taxable Base: Line 53 X _____ % from Schedule B, Line 25, 33 or 35	54	
55. Tax: Line 54 X .0015 (1½ Mills)	55	
56. Net value of issued Capital Stock, Line 52, Column (g)	56	
57. Taxable Base: Line 56 X _____ % from Schedule B, Line 25, 33 or 35	57	
58. Tax: Line 57 X .0015 (1½ Mills)	58	
59. Net Worth - year end Assets minus year end Liabilities - Schedule C, Col. (b)	59	
60. Taxable Base: Line 59 X _____ % from Schedule B, Line 25, 33 or 35	60	
61. Tax: Line 60 X .0015 (1½ Mills)	61	
62. TAX ON ALLOCATED ISSUED CAPITAL STOCK Largest of Lines 55, 58 or 61) - Enter in Schedule A, Line 1	62	$

SCHEDULE F - COMPUTATION OF TAX IF DIVIDEND RATE IS 6% OR MORE. ALL CORPORATIONS EXCEPT THOSE OPERATING VESSELS IN FOREIGN COMMERCE COMPLETE PARTS I AND II.

PART I - Tax Rate Computation based on Dividends Paid during the year

(a) Class of Stock	(b) Value of Stock on which Dividends were paid	(c) Dividends Paid	(d) Dividend Rate (c) ÷ (b)	(e) Tax Rate Computation - If Column (d) is 6% or more, multiply each percent in Column (d) by .000375 (3/8 of a Mill)
63. Common	$	$	%	Mills; enter at Line 69
64. Preferred	$	$	%	Mills; enter at Line 72
65. No Par Value	$	$	%	Mills; enter at Line 75
66. TOTAL →	$			

PART II - Tax Computation

67. Par Value Common Stock - Line 63, Column (b)	67	$
68. Taxable Base: Line 67 X _____ % from Schedule B, Line 25 or 33	68	
69. Tax: Taxable Base, Line 68 X Tax Rate _____ Mills, Line 63, Column (e)	69	
70. Par Value Preferred Stock - Line 64, Column (b)	70	
71. Taxable Base: Line 70 X _____ % from Schedule B, Line 25 or 33	71	
72. Tax: Taxable Base, Line 71 X Tax Rate _____ Mills, Line 64, Column (e)	72	
73. Amount paid in on No Par Value Stock - Line 65, Column (b)	73	
74. Taxable Base: Line 73 X _____ % from Schedule B, Line 25 or 33	74	
75. Tax: Taxable Base, Line 74 X Tax Rate _____ Mills, Line 65, Column (e)	75	
76. Total Value of Stockholder Equity	76	
77. Capital Subject to tax on Dividends (Lines 67, 70, and 73)	77	
78. Capital Not Previously Taxed (Line 76 minus Line 77)	78	
79. Taxable Base: Line 78 X _____ % from Schedule B, Line 25 or 33	79	
80. Tax: Line 79 X .0015 (1½ Mills)	80	
81. TOTAL TAX: Add Lines 69, 72, 75 and 80. Enter at Schedule A, Line 2	81	$

CORPORATIONS OPERATING VESSELS IN FOREIGN COMMERCE

PART III - Tax Rate Computation based on Dividends Paid during the year

(a) Paid in Capital	(b) Dividends Paid	(c) Dividend Rate (b) ÷ (a)	(d) Tax Rate Computation - If Column (c) is 6% or more, multiply each percent in Column (c) by .000375 (3/8 of a Mill)
82.	$	%	Mills; enter at Line 85

PART IV - Tax Computation

83. Paid in Capital - Line 82, Column (a)	83	$
84. Taxable Base: Line 83 X _____ % from Schedule B, Line 35	84	$
85. Tax: Taxable Base, Line 84 X Tax Rate _____ Mills, Line 82, Column (d)	85	$

RA-4

SCHEDULE G - MILEAGE ALLOCATION - SECTION 184

		(a) New York	(b) Everywhere
86. Mileage	86		
87. Allocation Percentage - Line 86, column a ÷ column b	87		

SCHEDULE H - TAX COMPUTATION BASED ON GROSS EARNINGS FROM BUSINESS IN NEW YORK STATE, SECTION 184

		GROSS RECEIPTS		ALLOCATION %	
88. Gross Receipts from business and other sources (Total per Federal Return)	88				
Gross Receipts from transportation and transmission allocated to NYS					
89. Trucking	89	$	X	%	
90. Pipeline	90	$	X	%	
91. Aviation	91	$	X	%	
92. Messenger Service	92	$	X	%	
93. Telephone and Telegraph	93	$	X	%	
94. Television Antenna and Cable TV System	94	$	X	%	
95. Water Transportation - Gross Receipts from transportation services originating and terminating within New York State - attach rider	95				
96. Railroad Transportation - Gross Receipts from transportation services originating and terminating within New York State - attach rider	96				
Gross Receipts from other sources					
97. Rental Income from use of real or tangible personal property within New York State	97				
98. Interest Income from assets held, used or employed in New York State	98				
99. Dividends from companies doing business wholly in New York State	99				
100. Dividends from companies doing business within and without New York State apportioned on the basis of Physical Assets within and without New York State – attach schedule	100				
101. Capital Gains from sale or exchange (see instructions)	101				
102. Gross receipts from all other sources within New York State	102				
103. Total Gross Earnings allocated to New York State - add Lines 89 through 102	103				
104. Tax - Line 103 X .0075 - enter at Line 4, Schedule A	104				

SCHEDULE I - ANNUAL TAX ON DIVIDENDS - IF THIS IS A SUBWAY, RAILROAD, ELEVATED RAILROAD, OR SURFACE RAILROAD NOT OPERATED BY STEAM WHOSE PROPERTY IS LEASED TO ANOTHER RAILROAD, THE FOLLOWING ITEMS MUST BE COMPLETED FOR THE PERIOD BEGINNING JANUARY 1, 1982 AND ENDING DECEMBER 31, 1982.

105. Name of Corporation to whom leased	106	
106. Amount of Capital Stock on which dividends were paid	107	
107. Total amount of dividends paid	108	
108. Dividend rate percent, per annum - Line 107 ÷ Line 106	109	
109. Amount of dividends paid in excess of 4% dividend rate	110	
110. Tax on dividends - Line 109 X 4.5% (Enter at Schedule A, Line 5)		

Composition of Prepayments Claimed at Line 11, Schedule A

	Date	Section 183	Section 184	DEPOSIT SERIAL NUMBER
A. Mandatory First Installment		$	$	
B. CT-400 Installments - Due June				
Due Sept.				
Due Dec.				
C. Payment with extension CT-180.1				
D. Credit from Prior Year(s)				
E. Total A, B, C and D Amounts shown at Line 11, Schedule A		$	$	

A COPY OF YOUR FEDERAL RETURN - PAGES 1 AND 4 MUST ACCOMPANY THIS REPORT

CT-183/184I (12/82) STATE OF NEW YORK - DEPARTMENT OF TAXATION AND FINANCE

INSTRUCTIONS FOR FORM CT-183/184

FRANCHISE TAX REPORT ON CAPITAL STOCK AND GROSS EARNINGS BY TRANSPORTATION AND TRANSMISSION CORPORATIONS AND ASSOCIATIONS

RECENT LAW CHANGE

Amendments to Section 3 of Article 1 of the Tax Law subject domestic corporations exclusively engaged in the operation of aircraft in foreign commerce to tax under Sections 183 and 184 of the Tax Law for all taxable periods beginning on or after January 1, 1981.

All corporations engaged exclusively in the operation of vessels in foreign commerce are exempt from all taxation for New York State and local purposes on their capital stock, franchises and earnings.

Other legislation amended the jurisdictional standards of Sections 183 and 184 of Article 9 to conform with the jurisdictional standards under Article 9-A. Some foreign corporations previously exempt are now taxable under Sections 183 and 184 of Article 9 if the corporation does business, employs capital, owns or leases property, or maintains an office in New York State. Gross earnings of an interstate character are no longer exempt from tax under Section 184 of the Tax Law.

For taxable years beginning on or after January 1, 1981, the tax under Section 184 of Article 9 does not apply to a railroad, palace car or sleeping car company, or to a navigation, canal, ferry (unless operating between New York City boroughs under a city lease), steamboat or other corporations operating vessels if the corporation's only activity in New York State is (1) maintaining an office and employing capital, and (2) owning property used exclusively in interstate or foreign commerce.

WHO MUST FILE FORM CT-183/184

Form CT-183/184 must be filed by every corporation, joint-stock company or association formed for or principally engaged in the aviation, railroad, canal, steamboat, express, navigation, pipeline, transfer, baggage express, trucking, telephone, telegraph, palace or sleeping car or ferry business and every other transportation or transmission business (except ferry companies operating between any of the boroughs of the City of New York, "omnibus corporations" and "taxicab corporations").

TAX BASIS

Article 9, Section 183, of the Tax Law provides for a franchise tax based on the net value of issued capital stock employed in New York State (see Schedule E).

The net value of issued capital stock may be allocated within and without New York. The allocation is based on the gross assets employed in New York (see Schedule B).

The franchise tax required to be paid under Section 183 is the highest tax computed by three methods.

1. Allocated value of issued capital stock multiplied by the tax rate of 1.5 mills (.0015)
2. Allocated value of issued capital stock multiplied by dividend rate in excess of 6%
3. Minimum tax of $75.00

A combination of tax on capital stock using the tax rate of 1.5 mills and the dividend rate as computed in Schedule F is possible if a corporation has more than one kind of stock.

Article 9, Section 184, provides for a tax at a rate of ¼ of 1% of the gross earnings received from business in New York State during the year. A railroad whose property is leased to another railroad must pay a tax of 4½% on dividends paid during the year in excess of 4% of the amount of its capital stock. The tax on gross receipts would not apply.

See Schedules G and H on page 4 of Form CT-183/184.

FOREIGN CORPORATIONS

License Fee

Foreign corporations must also file a report of license fee. See Form CT-240.

Maintenance Fee

Every foreign corporation authorized to do business in New York must pay an annual maintenance fee of $200. This fee may be applied against the taxes due under Article 9 except the license fee imposed by Section 181. If the total franchise taxes, excluding the installment of 1983, payable with your returns on Forms CT-183/184, CT-186A and CT-186P for December 31, 1982, exceed $200, you have satisfied the requirement to pay a maintenance fee. If the total taxes due, excluding the installments for 1983, are less than $200, add the amount needed to produce a total tax and maintenance fee of $200 on line 15 of Form CT-183/184.

Extension of Time for Filing Tax Report

A request for an extension of time to file a tax report must be filed on or before March 15, 1983 on Form CT-180.1.

An extension of time granted by IRS to file a federal return does not extend the due date for filing a New York State report.

SCHEDULE A

Line 1 - Enter tax computed in Schedule E and shown on line 62. This is the largest tax computed in Schedule E, based on the net value of allocated issued capital stock.

Line 2 - Enter tax from Schedule F, line 81 or line 85. This is the tax computed on dividends paid in excess of 6%.

Line 4 - Enter tax from Schedule H, line 104. This is the tax based on gross receipts.

Line 5 - Enter tax from Schedule I, line 110. This is an annual tax on dividends paid by a railroad whose property is leased to another railroad.

Line 6 - In Column A, enter largest of taxes shown in lines 1, 2 and 3.

Line 8 - In Column B, enter the amount on either line 4 or 5.

Line 7 - Columns A and B - A credit may be taken against your franchise tax for any "additional mortgage recording tax" paid by you. This credit may not reduce your tax below the minimum tax or, if you are an authorized foreign corporation, it may not reduce the tax below the $200 maintenance fee. Any unused credit may be carried forward. Attach Form CT-43, Claim for Additional Mortgage Recording Tax Credit.

Line 9 - If the tax shown on line 8, Column B, exceeds $1,000, a mandatory first installment is required for the period following that covered by this report. Show this installment on line 9 by entering 25% of the tax on line 8, Column B.

Line 11 - Prepayments to be entered in Column A or B include one or more of the following:

a. Mandatory first installment
b. Installment payments made with CT-400 forms
c. Credits transferred from prior years
d. Payments made with application for extension (CT-180.1)

Enter installments made under Section 184 in Column B only.

A schedule to assist you in the reconciliation of your prepayments is located on the bottom of page 4 of the form.

Line 12 - Enclose overpayments in parentheses:( ).

Line 13a - You may use an overpayment in one column to eliminate the tax due in the other column.

Line 15 - Foreign authorized corporations only: If the total taxes due with your franchise tax returns, CT-183/184, CT-186P and CT-186A, for December 31, 1982, total less than $200, add the difference to the tax due on this form and enter the total ($200) on this line. Attach rider showing computation. The additional mortgage recording tax credit may not reduce the maintenance fee below $200.

- Example -

Sec. 183, Minimum Tax, 12/31/82	$ 75.00
Sec. 184, Tax for 12/31/82	100.00
Total	175.00
Maintenance Fee for 1982	$ 200.00
Enter $200 at line 15.	

Line 16a - If you do not pay the tax on or before the due date (determined without regard to any extension), you must pay interest on the amount of the underpayment from the due date to the date paid.

The interest rate should be determined in accordance with part 603 of the Tax Regulations.

Line 16b - Additional charges:

- In case of failure to file a return when due, add to the tax, less any payments made on or before the due date, 5% per month up to 25%.
- In case of failure to pay the tax shown on the return, add to the tax, less any payments made, ½% per month up to 25%.
- The total of the two preceding additional charges may not exceed 5% for any one month.

Schedule B

Part I — General Transportation Corporations

Line 19 - If the assets of any company whose stock is owned by this corporation are employed both "IN" and "Outside" New York, an apportionment of your holdings may be made on the basis of percentage of employment by the issuer of the stock.

Line 20 - Bonds, loans and other securities are considered located where held.

Line 21 - Show all other assets except cash and investments in United States obligations.

Line 24 - The total of lines 18 through 23 (column b) must equal the amount of gross assets shown on the balance sheet of your federal return, except for cash and investments in United States obligations. Amounts shown in Column 2 should be the proportionate amounts for gross assets employed in New York State.

Part II — Aviation Corporations

Line 26 - "Aircraft arrivals and departures" means the number of landings and takeoffs of an aircraft and the number of aircraft pickups and deliveries. Arrivals and departures for maintenance, repair, refueling, training, emergencies, and nonrevenue flights should not be included on line 26.

Line 28 - "Revenue tons handled" means the weight in tons, of revenue passengers (at 200 pounds per passenger) and revenue cargo first received either as originating or connecting traffic or finally discharged at an airport.

Line 30 - "Originating revenue" means revenue from the transportation of revenue passengers and revenue property received as originating or connecting traffic.

Part III — Corporations Operating Vessels in Foreign Commerce

Line 34 - "Working days" means days during which a vessel is sufficiently manned for the transportation of persons or cargo or when it has cargo aboard. The working time in New York territorial waters and the working time everywhere shall be computed for each vessel in hours and minutes. At the end of the year, such time shall be totaled for all vessels and the sum coverted into days. Instead of records indicating actual time in New York territorial waters, time may be computed from records showing the time Ambrose Light Station was passed on the way in and out of port.

Schedules C and D

Information required in these two schedules must be the same information that appears on the balance sheet of your federal return. Attach a copy of your federal return.

Schedule E

Tax based on net value is the largest tax computed by the following three methods of valuing stock:

1. $5.00 per share of stock outstanding at year-end (lines 53 through 55).
2. The average selling price at which stock is sold during the year (lines 56 through 58).
3. The difference between the corporation's assets and liabilities (lines 59 through 61).

Schedule F

Part I

Compute the dividend rate on par value capital stock by using the par value of such stock. Do not include any "paid-in capital."

Compute the dividend rate on "no par value" stock by dividing the dividend paid by the amount paid for the stock. The amount "paid in" includes only the amount paid in for the stock (stated value of no par stock) and paid-in capital on such stock. It does not include capital arising from appreciation of assets, amounts not contributed by the stockholder or retained earnings.

Part II

If you paid a 6% or more dividend on all classes of issued capital stock, you need not complete lines 78 through 80.

If you did not pay a 6% dividend on all classes of stock, compute a tax on the dividend based on the value of the stock on which the dividend of 6% or more was paid plus a tax, at the "capital stock" rate, on the remaining value of all capital stock.

The remaining value of all capital stock depends on which class of capital stock the dividend was paid. If the dividend was paid on preferred stock, the remaining value of all capital stock is retained earnings plus common stock. If the dividend was paid on common stock, the remaining value of all capital stock is preferred stock. Retained earnings are normally associated with common stock. The following examples show how the dividend rates and remaining value of capital are computed:

Example 1: Dividend Paid on Preferred Stock

Par Value of Common Stock	$10,000	
Par Value of Preferred Stock	50,000	
Retained Earnings	80,000	
Dividend Paid on Preferred Stock	3,000	
Dividend Rate ($3,000 ÷ $50,000)	6%	
6 x .000375 (tax rate of ¾ mill)	.00225	
Tax ($50,000 x .00225)		$112.50
Remaining Value of Issued Capital Stock (common stock plus retained earnings: $80,000 x .0015)		138.00
Total Tax		$247.50

Example 2: Dividend Paid on Common Stock

Par Value of Common Stock	$10,000	
Par Value of Preferred Stock	50,000	
Retained Earnings	80,000	
Dividend Paid on Common Stock	3,000	
Dividend Rate ($3,000 ÷ $10,000)	30%	
30 x .000375 (tax rate of ¾ mill)	.01125	
Tax ($10,000 x .01125)		$112.50
Remaining Value of Issued Capital Stock (preferred stock only: $50,000 x .0015)		75.00
Total Tax		$187.50

Parts III and IV

Corporations operating vessels in foreign commerce must compute the dividend rate on "paid-in capital" for all classes of stock. This includes all amounts paid for the stock. It does not include capital from appreciation of assets, amounts not contributed by the stockholder or retained earnings.

Schedule G

All transportation and transmission corporations, except aviation corporations, corporations operating vessels or railroads and telephone and telegraph corporations must use this schedule to determine their mileage allocation. The mileage allocation is a percentage based on the number of revenue miles traveled within New York State compared to the total revenue miles traveled everywhere (nonrevenue miles, such as deadheading, should be excluded). The mileage allocation is used in Schedule H to compute the tax based on gross earnings from business activities in New York State.

Schedule H

Line 89 - Enter total gross receipts earned from trucking services everywhere and multiply by the mileage allocation percentage computed on line 87 of Schedule G.

Line 90 - Enter total gross receipts earned from pipeline services everywhere and multiply by the mileage allocation percentage computed on line 87 of Schedule G.

Line 91 - Enter total gross receipts earned from aviation services everywhere and multiply by the allocation percentage for aviation corporations computed on line 33 of Schedule B, Part II.

Line 92 - Enter total gross receipts earned from messenger services everywhere and multiply by the mileage allocation percentage computed on line 87 of Schedule G.

Line 93 - Telephone and telegraph corporations must allocate their gross earnings from transmission services. The allocation shall be based on gross operating revenue from transmission services performed wholly within New York State plus the portion of revenue from interstate and foreign transmission services attributable to New York State. A Taxpayer Service Bureau Memorandum, TSB-M-82(6)C, describes the method that must be used to allocate gross earnings attributable to New York State. The memorandum may be obtained from:

Taxpayer Assistance Bureau
Building 8, Room 915
State Campus
Albany, NY 12227
Telephone (518) 457-6803

Line 94 - Enter total gross receipts from television antenna and cable television systems services. If the antenna and all subscribers are located in New York State, 100% of the gross earnings must be allocated to New York State. Otherwise, gross receipts may be allocated on the basis of property within New York State compared to property everywhere.

Line 95 - Enter gross receipts from water transportation business originating and terminating within New York State. Receipts from business beginning and ending in New York State but passing through another state or country must be allocated within and without New York State include only that part of the revenue received from such business as the miles in New York State compare to the total miles. Attach a rider to show the computation of loop traffic allocation.

Line 96 - Enter gross receipts from railroad transportation business originating and terminating within New York State. Receipts from business beginning and ending in New York State but passing through another state or country must be allocated within and without New York State include only that part of the revenue received from such business as the miles in New York State compare to the total miles. Attach a rider to show computation of loop traffic allocation.

Line 98 - Interest income from assets, regardless of their physical location, should be included in gross receipts from business in New York State when the office of the corporation with management control over the assets is located in New York State. Interest earned on United States and New York State government securities is not taxable.

Line 101 - The profit on the sale of exchange of real or tangible personal property is computed on the basis of the original cost, not the depreicated cost, less any expenses iocurred in making the sale. Gains from the sale or exchange of United States and New York State government securities are taxable receipts and should be reported. Capital gains may not be reduced by capital losses.

Line 103 - Add lines 89 through 102 to obtain the total gross earnings allocated to New York State.

Line 104 - To compute the tax, multiply total gross earnings allocated to New York State on line 103 by tax rate of three quarters of one percent (.0075). Enter at line 4, Schedule A.

Schedule I

Line 107 - Enter dividends paid during the period from January 1, 1982, to December 31, 1982.

Composition of Prepayment Claimed at Line 11, Schedule A

It is not mandatory to provide this information. However, we are asking you to do so. If a discrepancy should arise between your records and ours, we could resolve it promptly with this information.